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2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5
6 UNITED STATES OF AMERICA,

7 v.
Plaintiff,

8 ANTONIO CASARES-CUEVAS,

9 Defendant.

Case No. 3:12-cr-00038-HDM-VPC
Case No. 3:24-cv-00348-HDM

10 ORDER

11 The defendant has filed a motion to vacate, set aside, or
12 correct sentence pursuant to 28 U.S.C. § 2255 (ECF No. 261). The
13 court conducts a preliminary review pursuant to Rule 4(b) of the
14 Rules Governing Section 2255 Motions for the United States District
15 Courts, which provides that “[i]f it plainly appears from the
16 motion, any attached exhibits, and the record of prior proceedings
17 that the moving party is not entitled to relief, the judge must
18 dismiss the motion and direct the clerk to notify the moving
19 party.” For the following reasons, the defendant will be ordered
20 to show cause why his § 2255 motion should not be dismissed.

21 In 2013, the defendant was convicted, pursuant to a plea
22 agreement, of one count of conspiracy to possess with intent to
23 distribute 500 grams or more of a mixture or substance containing
24 a detectable amount of methamphetamine. (ECF Nos. 84, 149 & 152).
25 Under the agreement, the defendant agreed that he was not safety-
26 valve eligible. (ECF No. 152 at 7).

27 At 500 grams or more of methamphetamine, the defendant was
28 facing a statutory sentence of at least ten years up to life. 21

1 U.S.C. § 841(b)(1)(A). The PSR calculated the defendant's
 2 sentencing range to be 235 to 293 months, based in part on its
 3 determination that the defendant was responsible for 1.3582
 4 kilograms of actual methamphetamine. At sentencing, however, the
 5 court determined that the amount of methamphetamine attributable
 6 to the defendant was actually in excess of 1.5 kilograms. (ECF No.
 7 208). This finding increased the defendant's offense level by two,
 8 yielding a guidelines range of 292 to 365 months. The court
 9 ultimately sentenced the defendant to 292 months' imprisonment.¹
 10 (ECF Nos. 198 & 208). The defendant filed a notice of appeal, which
 11 was dismissed on the grounds that it was barred by the defendant's
 12 valid appeal waiver. (ECF No. 210).

13 Now, more than a decade after judgment of conviction was
 14 entered in this case, the defendant has filed a motion for relief
 15 under § 2255. The motion raises a single claim for relief: that
 16 the defendant "received an unconstitutional sentence in violation
 17 of the Fifth and Sixth Amendments" as recognized in *Erlinger v.*
 18 *United States*, -- U.S. --, 144 S. Ct. 1840 (2024). (*Id.* at 18).
 19 Specifically, the defendant asserts that his sentence violates
 20 *Erlinger* in two ways: (1) the court found he was not safety-valve
 21 eligible based on facts that had not been presented to and found
 22 by a jury; and (2) the court, and not a jury, determined that he
 23 was responsible for more than 1.5 kilograms of methamphetamine,
 24 which increased his offense level by two. (*Id.* at 7). The
 25 defendant's motion fails to state a claim for relief.

26

27 ¹ The parties later stipulated to, and the court granted, a
 28 reduction of the defendant's sentence to 235 months under 18 U.S.C.
 § 3582(c)(2). (ECF Nos. 228-30).

1 In *Erlinger*, the Supreme Court held that a jury must decide
2 beyond a reasonable doubt that prior offenses were committed on
3 separate occasions before a defendant can be subjected to an
4 enhanced mandatory minimum sentence under the Armed Career
5 Criminal Act. *Erlinger's* specific holding has no application to
6 this case, which does not involve an enhanced sentence under the
7 ACCA. And the principle upon which *Erlinger* relied – that
8 “[v]irtually any fact that increases the prescribed range of
9 penalties to which a criminal defendant is exposed must be resolved
10 by a unanimous jury beyond a reasonable doubt (or freely admitted
11 in a guilty plea),” *Erlinger*, 144 S. Ct. at 1851 (internal
12 punctuation omitted) – stems from *Apprendi v. New Jersey*, 530 U.S.
13 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013), which
14 were both well established at the time of the defendant’s
15 conviction and sentence. Furthermore, even if this was somehow new
16 law, the defendant’s sentence violates neither *Apprendi* nor
17 *Alleyne*. Not only did the defendant freely admit in his plea
18 agreement that he was not eligible for the safety-valve based on
19 his criminal history and the firearms he possessed, “the factual
20 predicate for denying safety valve relief need not be proven to a
21 jury.” See *United States v. Lizarraga-Carrizales*, 757 F.3d 995,
22 999 (9th Cir. 2014). And the facts found by the court related to
23 drug quantity did not increase the prescribed range of penalties
24 the defendant was facing. See *United States v. Vallejos*, 742 F.3d
25 902, 906 (9th Cir. 2014); *United States v. Sanchez*, 583 Fed. App’x
26 727 (9th Cir. 2014) (“[T]he Sixth Amendment is not violated when
27 a sentencing court finds facts while exercising its discretion to
28 impose a sentence within the statutorily prescribed range.”). The

1 court's sentence of 292 months fell squarely within the statutorily
2 prescribed range of ten years to life.

3 Finally, the motion appears to be untimely. A motion under §
4 2255 must be filed within one year of "the latest of—

5 (1) the date on which the judgment of conviction becomes
6 final;

7 (2) the date on which the impediment to making a motion
8 created by governmental action in violation of the
9 Constitution or laws of the United States is removed, if
10 the movant was prevented from making a motion by such
11 governmental action;

12 (3) the date on which the right asserted was initially
13 recognized by the Supreme Court, if that right has been
14 newly recognized by the Supreme Court and made
15 retroactively applicable to cases on collateral review;
or

16 (4) the date on which the facts supporting the claim or
17 claims presented could have been discovered through the
18 exercise of due diligence.

19 28 U.S.C. § 2255(f). The defendant's judgment of conviction had
20 been final for a decade before he filed the instant motion, so it
21 is not timely under § 2255(f)(1). Nor is it likely that the
22 defendant can establish timeliness under § 2255(f)(3) and the
23 *Erlinger* decision. Not only does *Erlinger* not apply to the
24 defendant's case, the defendant has not identified any case – and
25 the court has found none – holding that any right initially
26 recognized in *Erlinger* is retroactively applicable on collateral
27 review.

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For the foregoing reasons, the defendant shall, within thirty days of the date of this order, SHOW CAUSE why his § 2255 motion should not be dismissed as untimely and for failure to state a claim. Failure to file a timely response will result in dismissal of the § 2255 motion with prejudice.

6 IT IS SO ORDERED.

7 DATED: This 17th day of September, 2024.

Howard D McKibben

UNITED STATES DISTRICT JUDGE
